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In re Application of :
Choi : DECISION ON PETITION
Application No. 10/670,003 :
Filed: September 25, 2003 :
Dkt. No.: 6192.0181.C1 :

This is a decision on the "PETITION UNDER 37 C.F.R. § 1.78," filed July 8, 2004, to accept an unintentionally delayed claim under 35 USC 120 for the benefit of the prior filed nonprovisional application set forth in the concurrently filed amendment.

The petition is **GRANTED**.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR §§ 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(3) must be accomplished by:

- (1) the reference required by 35 USC 120 and 37 CFR 1.78(a)(2) to the prior-filed application, unless previously submitted;
- (2) the surcharge set forth in § 1.17(t); and
- (3) a statement that the entire delay between the date the claim was due under 37 CFR §§ 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

The instant Nonprovisional application was filed after November 29, 2000 on September 25, 2003 and was pending at the time of filing of the instant petition. The claim for the benefit of priority to the prior-filed Nonprovisional application was submitted after expiration of the period specified in 37 CFR

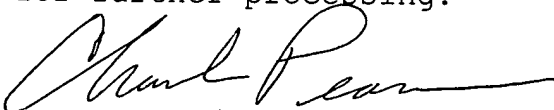
1.78(a)(2)(ii). The reference to the prior-filed Nonprovisional application was submitted during the pendency of the instant nonprovisional application for which the claim for benefit of priority is sought. See, 35 USC 120. Accordingly, having found that the instant petition for acceptance of an unintentionally delayed claim for the benefit of priority under 35 USC 120 to the prior-filed nonprovisional application satisfies the conditions of 37 CFR 1.78(a)(3), the petition is hereby GRANTED.

The granting of the petition to accept the delayed benefit claim to the prior-filed application under 37 CFR 1.78(a)(3) should not be construed as meaning that the instant application is entitled to the benefit of the prior-filed application. In order for the instant application to be entitled to the benefit of the prior-filed application, all other requirements under 35 USC 120 and 37 CFR 1.78(a)(1) and (a)(2) must be met. Similarly, the fact that a corrected filing receipt was mailed prior to the mailing of this decision on petition and included the prior-filed application should not be construed as meaning that application is entitled to the claim for benefit of priority to the prior filed application noted thereon. The examiner will, in due course, consider this benefit claim and determine whether the instant application is entitled to the benefit of the earlier filing date.

A Corrected Filing Receipt, which included the priority claim to the prior-filed nonprovisional application, was previously mailed. Therefore, this decision is not accompanied by an additional Corrected Filing Receipt.

Inquiries concerning this decision may be directed to Petitions Attorney Alesia M. Brown at (571) 272-3205.

This application is being forwarded to Technology Center 2800 for further processing.



Charles Pearson
Director
Office of Petitions
Office of the Deputy Commissioner
For Patent Examination Policy